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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048777
Party	Plaintiff adidas America, Inc.
Correspondence Address	David K. Friedland Lott & Friedland, P.A. 355 Alhambra Circle, Suite 1100 Coral Gables, FL 33134 UNITED STATES dkfriedland@lfiplaw.com, jrich@lfiplaw.com
Submission	Other Motions/Papers
Filer's Name	Jaime S. Rich
Filer's e-mail	jrich@lfiplaw.com, kruiz@lfiplaw.com, dkfriedland@lfiplaw.com,krivera@lfiplaw.com
Signature	/Jaime S. Rich/
Date	05/21/2008
Attachments	Petitioner's Motion to Strike Registrants Response to Petitioner's Reply-Final.pdf (3 pages)(584587 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

adidas America, Inc., a Delaware
corporation,
Petitioner.

v.

Michael D. Calmese, a resident of
Arizona,
Registrant

Cancellation No.: 92048777
Registration No.: 2,202,454
Registration Date: November 10, 1998
Mark: **PROVE IT!**

**PETITIONER'S MOTION TO STRIKE REGISTRANT'S RESPONSE TO
PETITIONER'S REPLY**

Pursuant to Fed. R. Civ. P. 12(f), TBMP § 502.02(b) and Trademark Rule 2.127(a),
Petitioner, adidas America, Inc. ("Petitioner"), by and through undersigned counsel, moves
this Board to strike Registrant, Michael D. Calmese's ("Registrant") Response to Petitioner's
Reply ("Surreply") and as grounds therefore states as follows:

I. INTRODUCTION

On April 3, 2008, Petitioner filed its Motion for Entry of Default Judgment, or
Alternatively, For Order to Show Cause why Registrant should not be sanctioned for failure
to participate in good faith in the required discovery conference prior to the April 2, 2008
deadline ("Motion for Default"). On April 14, 2008, Registrant filed his Response to
Petitioner's Motion for Entry of Default Judgment, or Alternatively, For Order to Show
Cause ("Response"), in which Registrant requested that the Board suspend the current
proceedings. On May 5, 2008, Petitioner filed its Reply Memorandum in Support of Motion
for Entry of Default Judgment, or Alternatively, For Order to Show Cause ("Reply") on the
basis that Registrant's Response is legally insufficient and fails to explain why Registrant

elected not to participate in good faith in the required discovery conference prior to the Board's April 2, 2008 deadline. On May 16, 2008, Registrant filed his Surreply. In accordance with the Trademark Trial and Appeal Board of Procedure ("TBMP") § 502.02(b) and Trademark Rule 2.127(a), Registrant's additional response is explicitly impermissible and therefore must be stricken.

II. ARGUMENT AND CITATION OF AUTHORITIES

Rule 12(f), Fed. R. Civ. P. provides:

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party...the court may order stricken from any pleading any insufficient defense.

Rule 12(f), Fed. R. Civ. P. "[T]he function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983).

Trademark Rule 2.127(a) provides, in relevant part:

a reply brief, if filed, shall be filed within fifteen days from the date of service of the brief in response to the motion...The Board will consider **no further papers in support of or in opposition to a motion** (emphasis added).

Trademark Rule 2.127(a). *See also* TBMP § 502.02(b) ("No further papers (including surreply briefs) will be considered by the Board, and any such papers filed in violation of this rule may be returned to the filing party"); *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1553 (TTAB 2000). Accordingly, Trademark Rule 2.127(a) and TBMP § 502.02(b) expressly prohibit the filing of a surreply brief.

In view thereof, Petitioner requests that Registrant's Surreply brief dated May 16, 2008 be stricken from the records, given no consideration, and returned to Registrant.

Date: May 21, 2008

Respectfully submitted,

LOTT & FRIEDLAND, P.A.



David K. Friedland
Jaime S. Rich
355 Alhambra Circle
Suite 1100 (zip code: 33134)
Post Office Drawer 141098
Coral Gables, Florida 33114-1098
(305) 448-7089 telephone
(305) 446-6191 facsimile
dkfriedland@lfiplaw.com
jrich@lfiplaw.com

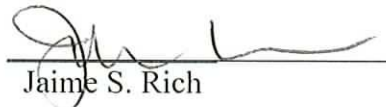
Attorneys for Petitioner adidas America, Inc.

Our File 01153-1-8820

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing **PETITIONER'S MOTION TO STRIKE REGISTRANT'S RESPONSE TO PETITIONER'S REPLY** was served upon the Registrant by delivering true and correct copies of same to Registrant via Federal Express on May 21, 2008 as follows:

Michael D. Calmese
14666 N. 90th Lane
Peoria, AZ 85381



Jaime S. Rich